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3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 * * *

6 UNITED STATES OF AMERICA,

Case No. 3:21-cr-00023-MMD-WGC

7 Plaintiff,

ORDER

8 v.

9 CARLOS VASQUEZ-ORTIZ,

10 Defendant.

11 **I. SUMMARY**

12 On July 15, 2021, Carlos Vasquez-Ortiz was indicted on one count of deported
13 alien found in the United States in violation of 8 U.S.C. §§ 1326(a) and (b) ("Section
14 1326"). (ECF No. 12.) Before the Court is Vasquez-Ortiz's motion to dismiss the
15 indictment (the "Motion") on the grounds that Section 1326 violates the equal protection
16 guarantee of the Fifth Amendment under the standard articulated in *Village of Arlington*
17 *Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), as this Court
18 found in *United States v. Carrillo-Lopez*, Case No. 3:20-cr-00026-MMD-WGC.¹ (ECF No.
19 25.) Both parties incorporate the arguments in *Carrillo-Lopez* by reference. (ECF Nos. 25
20 at 1, 26 at 2.) The government submits that the Court erred in its reasoning in *Carrillo-*
21 *Lopez*, and therefore that Vasquez-Ortiz's Motion should be denied. (ECF No. 26 at 2.)
22 in the alternative, the government requests the Court stay consideration of Vasquez-
23 Ortiz's Motion until the appeal in *Carrillo-Lopez* is resolved.

24 Because the government offers no additional argument or evidence as to why it
25 believes the Court erred in *Carrillo-Lopez*, the Court will grant Vasquez-Ortiz's Motion.
26 The government argues that the Court erred in three respects: (1) by applying *Arlington*

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1The government responds (ECF No. 26) and Vasquez-Ortiz replies (ECF No. 28.)

1 *Heights* instead of a more deferential standard,² (2) by concluding racial animus was a
 2 substantial or motivating factor of Section 1326,³ and (3) by concluding that Section 1326
 3 would not have passed absent the demonstrated racial animus. The government does
 4 not explain why the Court should change its opinion on any of these decisions. Indeed,
 5 the government only cites to cases that the Court examined, at times extensively, in
 6 *Carrillo-Lopez*.⁴ The Court therefore declines to reconsider its reasoning.

7 The government alternatively asks for a stay of Vasquez-Ortiz's case pending the
 8 appeal in *Carrillo-Lopez*. Vasquez-Ortiz argues that the government's appeal in *Carrillo-*
 9 *Lopez* will take months, if not years, to conclude—a period of time which exceeds any
 10 potential sentence Vasquez-Ortiz would serve. (ECF No. 28 at 4.) Requiring Vasquez-
 11 Ortiz to wait until the *Carrillo-Lopez* appeal is resolved would require him to either abandon
 12 his Motion and proceed with being prosecuted under a statute this Court previously found
 13 unconstitutional, or face a longer period of detention than he otherwise would be
 14 subjected to. The Court agrees, and therefore will grant the Motion rather than stay the
 15 case.

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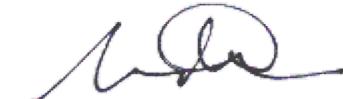
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 22 ²The government suggests the standards set forth in *Trump v. Hawaii*, 138 S. Ct. 2392 (2019), *Fiallo v. Bell*, 430 U.S. 787, 792 (1977), and *Kleindienst v. Mandel*, 408 U.S. 753, 765 (1972).

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 24 ³The government cites to *Abbott v. Perez*, 138 S. Ct. 2305, 2325 (2018), and
 25 *United States v. Machic-Xiap*, --F. Supp. 3d --, Case No. 3:19-cr-407-SI, 2021 WL 3362738 (D. Or. Aug. 3, 2021).

26 ⁴See *United States v. Carrillo-Lopez*, --F. Supp. 3d--, Case No. 3:20-cr-00026-
 27 MMD-WGC, 2021 WL 3667330, at *1-2 (D. Nev. Aug. 18, 2021) (explaining why *Trump*,
 28 *Fiallo*, and *Kleindienst* do not apply); *id.* at *16-18 (explaining why *Abbott* does not justify
 the government's inference that a later reenactment is necessarily cleansed of racial
 animus); *id.* at *19-20 (disagreeing with the ultimate conclusion of *Machic-Xiap*); *id.* at
 *20-24 (explaining that the evidence before the Court did not support the government's
 allegation that Section 1326 would have passed absent discriminatory intent).

1 It is therefore ordered that Vasquez-Ortiz's indictment (ECF No. 12) is dismissed.
2 The Clerk of Court is directed to enter judgment accordingly and close this case.
3 DATED THIS 23rd Day of September 2021.

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6 MIRANDA M. DU
7 CHIEF UNITED STATES DISTRICT JUDGE
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